

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9367 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed :
to see the judgements?
 2. To be referred to the Reporter or not? :
 3. Whether Their Lordships wish to see the fair copy :
of the judgement?
 4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned :
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DEVENDRASINGH KESHARISINGH RATHOD

Versus

DISTRICT & SESSIONS JUDGE

Appearance:

1. Special Civil Application No. 9367 of 2002
MR KAMLESH B MEHTA for Petitioner No. 1
..... for Respondent No. 1-4
-

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/09/2002

ORAL JUDGEMENT

The learned counsel for the petitioner seeks
leave to delete the words "because of poor, weak and sick
administration of the respondents" in paragraph 4 of the

petition.

Leave as prayed for is granted.

2. The petitioner, who was a Joint District and Sessions Judge, retired voluntarily from service on 8-7-1999 as per the order dated 6-7-1999. The District Judge, Junagadh fixed the provisional pension of the petitioner on 1-10-1999.

In this petition under Article 226 of the Constitution, no grievance is made about any delay in payment of monthly pension, but the petitioner has prayed for a direction to the respondents to pay the petitioner interest at the rate of 24% p.a. on the amount of commuted pension and gratuity for the period from 8-7-1999 to 20-3-2001 i.e. for about 19 months and on the amount of leave encashment for the period from 8-7-1999 till 15-2-2000 i.e. for about 8 months.

The petitioner has relied on the Government resolutions annexed with the petition in support of his claim that the respondents must pay interest for the delayed payments of all the retiral benefits.

3. The grievance being made by the petitioner is required to be appreciated in the context of the difference between the case of an employee retiring on superannuation in the normal course and the case of an employee voluntarily retiring from service such as the present case.

In ordinary case of retirement on superannuation, the Government or the employer is aware of the date of superannuation and, therefore, the concerned department starts preparing pension papers at least one year in advance prior to the date of retirement. Hence, if an employee retiring on superannuation in the normal course does not get the retiral benefits like pension and gratuity within a reasonable time from the date of retirement, he would be justified in making a grievance against the delay in receiving the pension and gratuity as he would have no other source of income for maintaining himself and the family and, therefore, the Courts have been directing the Government and the other public sector employers to pay interest on delayed payments of the retiral benefits. The rate of interest being awarded earlier was 12% p.a. which is now 9%p.a..

4. However, the present case is different from the cases of the aforesaid category. It transpires from the

office order dated 1-10-1999 (Annexure B) that the petitioner was under suspension from 13-5-1999 to 2-7-1999 and thereafter he was permitted by order dated 6-7-1999 to voluntarily retire from service after waiving the three months' notice period. The petitioner accordingly retired from service on 8-7-1999. Since the petitioner thus retired voluntarily well prior to the date on which he would have superannuated in the normal course, the concerned department could not have started preparing the pension papers in advance. In this view of the matter, if there was any delay in preparing the pension papers and ultimately in paying the petitioner retiral benefits, the time taken to the extent of about one year from the date of acceptance of the notice of voluntary retirement would have to be treated as reasonable. It is only for the delay beyond the period of one year from the date of retirement that the employee can possibly make grievance about the delay in payment of retiral benefits.

5. In this petition, the petitioner has made the grievance about the delay in receiving the following amounts:-

Item	Amount	Period computed from	the date of voluntary retirement
	Rs.		

(i) Leave encashment 1,86,872/- 08 months

(ii) Commuted pension 2,72,427/- 19 months

(iii) Gratuity 2,17,214/- 19 months

6. As far as the first item is concerned, it is clear that the petitioner has been paid the amount of leave encashment within about 8 months and, therefore, the period cannot be said to be unreasonable in view of the aforesaid reasoning.

7. As far as the second item is concerned, the learned counsel for the petitioner does not dispute the fact that the respondents had commenced payment of provisional monthly pension to the petitioner at the rate of 100% of monthly pension within a reasonable time and continued it until the respondents paid the petitioner commuted pension. It was only upon payment of commuted

pension that the respondents reduced the monthly pension to the petitioner. Hence, the petitioner did not suffer any loss on account of delay in payment of commuted pension. Commuted pension is a part of the pension otherwise payable in future paid to the retired employee in advance, Interest is, therefore, not to be awarded for the delay in payment of commuted pension.

8. As far as the third item is concerned, the amount of gratuity was paid after a period of about 19 months. Hence, it is only qua this amount that the petitioner can make any grievance about the delay in payment beyond the period of 12 months from the date of acceptance of the notice for voluntary retirement. This means that the petitioner has some case to claim interest on the gratuity amount of Rs.2,17,214/- for the period from 6-7-2000 till 20-3-2001 - the date on which the petitioner received the amount of gratuity.

9. Since the representations made by the petitioner earlier, which are annexed to the petition, claimed interest for the entire period from the date of retirement till the date of payment, which claim is not justified as held hereinabove, the petitioner is permitted to make a fresh representation to the respondents for claiming interest at the rate of 9%p.a. on the gratuity amount of Rs.2,17,214/- for the period from 6-7-2000 to 20-3-2001. If the petitioner makes such a representation, the authorities shall consider and decide the same as expeditiously as possible and in any case within two months from the date of receipt of the representation.

10. Subject to the aforesaid direction about the petitioner's claim for interest on the gratuity amount, there is no substance in the petitioner's claim for interest for the time taken by the respondents for paying the amounts of leave encashment and commuted pension and in the petitioner's claim for interest on the gratuity amount for the period of one year from the date of voluntary retirement i.e. from 6-7-1999 to 5-7-2000.

11. The petition is accordingly disposed of in the aforesaid terms.

(M.S. Shah, J)

zgs/-